



THE SECRETARY OF COMMERCE
Washington, D.C. 20230

SECRET

MAR 26 1983

Not referred to DOC. Waiver
applies.

MEMORANDUM FOR William P. Clark
Assistant to the President
for National Security Affairs

Subject: PRC Export Licensing Policy

In my January 26 memorandum (Attachment A), I stated that the Administration's export control policy on dual-use licensing cases to the People's Republic of China was encountering serious problems to the degree that the President's directive for a "clear and predictable" policy was not being implemented. I promised at that time to undertake an in-depth assessment of the situation and to recommend to you possible solutions. My staff has just completed this review, which is also being made available to the interagency group considering our broad China policy.

Although we have improved upon the previous Administration's record, our current PRC export license policy remains in difficulty both within the agencies seeking to administer it, and in the minds of the Chinese and the U.S. business community.

Our analysis of the problem and options for solving it follow. A series of statistical charts and explanations are at Attachment B.

I plan to convene a meeting of the Export Administration Review Board as soon as possible; this memorandum will be the basis for our discussion.

I. Background

The Administration's current export control policy toward the PRC was set forth in a Presidential directive of June 8, 1981. The policy called for "approval of technology to China at significantly higher technical levels than at present, albeit somewhat below those approved for other friendly non-allied countries." A technical benchmark of two-times the level of exports licensed to the Soviet Union (prior to its invasion of Afghanistan) was established to guide licensing to the PRC. Additional guidance on interpreting and implementing this policy was issued on May 6, 1982 (Attachment C). Although more export approvals for the PRC have accompanied the existing policy (see chart 1), implementation remains difficult and the Chinese and U.S. business are intensely dissatisfied.

SECRET

SECRET

- 2 -

The problems in implementing the May 6, 1982 guidance cluster around two broad questions.

1. Is two-times an effective technical guideline?
2. How is the two-times benchmark to be applied to specific licensing cases?

II. Is the two-times benchmark an effective guide?

The two-times benchmark does not lend itself readily to the Commodity Control List (CCL) system.

The CCL can be sub-divided into three components: "entries," which are the most comprehensive aggregation of product listings; "general product categories," a somewhat narrower division; and finally the "products" themselves. In total, the CCL encompasses 215 entries; over 400 general product categories; and well over 100,000 products.

There are 187 CCL 'entries' which potentially pertain to the PRC. After almost two years of attempting to implement the two-times benchmark, the Departments of Commerce and Defense have been able to agree on its application in only 17 of the 187 CCL entries -- and then in only some of the product categories covered by these 17 entries. These 17 CCL entries contain 110 general product categories, but agreement on how to apply the two-times benchmark has been reached for only 32 of these general product categories. The 32 general product categories cover approximately 30 percent of the total license applications to the PRC. In those product categories for which there is no agreement on application of the two-times benchmark, licensing applications are handled on a case-by-case review.

The Departments of Commerce and Defense have reached an impasse in defining further the two-times benchmark within the CCL entries.

A number of specific problems have been encountered:

- For certain items two-times is not meaningful because the item is denied export to the Soviet Union (thus, two-times zero is "zero"). One example is mask alignment equipment (see chart 6), which is used for microcircuit semiconductor production. Because the two-times policy cannot be applied, an agreement between Defense and Commerce was reached whereby the manufacture of 4K memory chips would be the standard, but chips between 4K and 16K would be decided on a case-by-case basis. By contrast, in the Free World there is widespread

SECRET

SECRET

- 3 -

availability of 64K chips and the capability to produce them. The capacity to produce 256K chips which is now developing in several countries, will also become widespread.

- For many products, such as computers, there are numerous technical parameters which are administratively hard to determine. For example, there are 14 different technical parameters in deciding whether a given computer system would be licensed to the PRC. In contrast, only 2 parameters (bus rate and processing data rate) are used for determining which computers may be exported to Free World countries.
- For some commodities interagency agreement on licensing to the PRC has been possible only at levels less than two-times that to the Soviet Union. For example, chart 5 shows that performance speed of disk memory commodities exported to the PRC is less than two-times that to the USSR.

Even in instances where the two-times benchmark has been successfully applied, it frequently does not represent a substantial liberalization. Although current policy is to license at levels "somewhat below those approved for other friendly non-allied countries", the commodities licensed to the PRC are dramatically less sophisticated than those commodities licensed to the Free World.

For example, chart 4 shows that the two-times policy has been applied to the size of internal memory in computers; but in comparison to what can be licensed to the Free World, it is dramatically less.

Chart 7 (analog-to-digital converters) also demonstrates the disparity between products licensed for the PRC and those for the Free World. Although the PRC two-times benchmark is 100 kilohertz, the state-of-the-art for the Free World is 50,000 kilohertz or 500 times that of the PRC.

Furthermore, even in those instances where the two-times benchmark is exceeded and a commodity licensed, approval frequently includes extensive special conditions, such as monthly or quarterly on-site visitations and other constraints not usually imposed on Free World cases.

III. How is two-times applied to specific licensing cases?

The May 6, 1982 guidelines provide a "predisposition of approval" for exports to the PRC, except where the export poses a "major risk to national security." The guidelines on their face seem to state that where the export contributes to Chinese military capability in the four special mission areas (nuclear weapons and

SECRET

SECRET

- 4 -

their delivery systems, electronic warfare, anti-submarine warfare and intelligence gathering) the export by definition poses a major risk to our national security. Furthermore, the narrative in the May 6, 1982 memorandum is written in such a way that this same analysis seems to apply regardless of whether the export is above or below two-times. Thus, the two-times benchmark in practice has been ignored in a number of instances by the Department of Defense.

Clearly, if the two-times benchmark is to guide licensing decisions where exports are within the four special mission areas, there should be a different standard as to approval or denial depending on whether the export is above or below the benchmark. (Exports outside the mission areas, by definition, pose no threat to U.S. national security.)

Further, I would argue that factors other than just "contribution to Chinese capability" in the four mission areas also need to be considered in assessing "major risk to national security." Additional factors should include the actual threat to the United States and availability from foreign sources of a comparable product.

IV. Options

We have identified four possible options.

1. Place the PRC in the Free World export licensing category, thereby treating it the same as the United Kingdom, Yugoslavia and India.

Pros

- Relatively simple to administer.
- Creates closer strategic ties between the PRC and the United States.

Cons

- Allies might balk at such a bold U.S. move for China, as we simultaneously attempt to tighten controls toward USSR.
- Might entail unacceptable risks to long-term U.S. national security interests.
- Politically unacceptable to treat China as a Free World country.

SECRET

SECRET

- 5 -

2. Keep the PRC in its present country grouping ("P") and treat the PRC essentially the same as a Free World country (e.g., the United Kingdom, Yugoslavia and India) for dual use products, but retain case-by-case controls on COCOM, munitions list, and atomic energy list items.

Pros

- Eliminates comparisons between licensing treatment of PRC and USSR, putting PRC in clearly favorable position.
- Blunts criticism by Allies that the United States is taking PRC completely out of COCOM controls.
- Interagency differences in implementation would be significantly reduced.
- Creates closer strategic ties between PRC and the United States, but without as great a risk of adverse political fallout under Option 1.

Cons

- Same as Option 1, except risks to U.S. national security interests would be less due to COCOM, munitions, and atomic energy controls.
3. Modify the May 6, 1982 guidance by:
 - a. Selecting a more suitable technical benchmark than two times, in order to better balance our twin desires of treating China as a friendly non-allied country and at the same time safeguarding our national security interests; and
 - b. Clarifying the licensing policy for exports within the four special mission areas.

These modifications of the current guidance would entail a discrete set of choices:

- a. Selection of the technical benchmark. The alternatives include:
 - i. 75 percent of the state-of-the-art technology readily available in the Free World;
 - ii. replace two times with five times;
 - iii. technology levels commonly available in COCOM countries in 1979; and
 - iv. retain the current two times technical level.

SECRET

SECRET

- 6 -

b. Licensing policy within the four special mission areas.
There are two broad options:

i. Exports with technical characteristics below the benchmark would be licensed without exception. Exports with technical characteristics above the benchmark would be approved case-by-case, except where the export poses a major risk to U.S. national security. In determining whether a proposed export above the benchmark constitutes a major risk to national security, the following factors must be accounted for:

- China's indigenous military capabilities;
- the contribution to Chinese capabilities;
- foreign availability
- the degree of actual threat to the U.S./Allies national security.

ii. Exports with technical characteristics below the benchmark would be approved, unless the export poses a major risk to our national security. In determining whether the proposed export below the benchmark constitutes a major risk to national security, the factors listed under Option "i" must be accounted for. For exports with technical characteristics above the benchmark, license applications would be denied.

Pros

- Provides clearer operational guidance on how to apply the benchmark.
- Substantially expands licensable PRC list.
- Sufficiently bold that bureaucracy would get the liberalization message.
- Demonstrates to the Chinese that the Administration remains committed to implementing a more liberal licensing policy.

Cons

- Might entail risks to long-term U.S. national security interests.
- Continues to require interagency negotiations to translate policy into specifics.

SECRET

SECRET

- 7 -

4. Keep the May 6, 1982 guidelines without modification, but direct DOD and DOC to reach agreement by May 15, 1983 on the technical parameters for all products/subproducts in the major CCL entries where almost all PRC license applications fall.

Pros

- Extends PRC licensing policy to full range of important CCL's.

Cons

- Provides no modification in the current PRC licensing policy to remedy its weaknesses.

Recommendation: Adopt Option 3(a)(i) and 3(b)(i). Attachment D is a proposed amendment to the May 6, 1982 guidelines incorporating this recommendation. Because this recommendation would still require application to the CCL entries, I recommend that the President also direct DOD and DOC to reach agreement by May 15, 1983 on the technical parameters for all products/subproducts in the major CCL entries applicable to the PRC.


Secretary of Commerce

Attachments

- Tab A: January 26, 1983 Memorandum from Malcolm Baldrige to William P. Clark
- Tab B: Charts and Analysis
- Tab C: May 6, 1982 Memorandum from William P. Clark
- Tab D: Proposed Amendment to May 6, 1982 Memorandum

cc: George P. Shultz
Casper W. Weinberger
Donald T. Regan
William P. Casey

SECRET